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The Canadian Constitution

*A study of the
written and unwritten
features of our
system of government*

By

Brigadier W. J. Lawson, Q.C.,

Judge Advocate General of
The Canadian Forces



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FOREWORD

This publication is a revised version of a brochure first published in 1952 as the first in the Canadian Citizenship series prepared for the Canadian armed forces.

It deals with the written and unwritten features of our system of government and makes a comparison with the constitution of the United Kingdom and the United States. It describes the British North America Act and the division of powers between the Federal Government and the provinces. It treats of the traditional functions of all governments—legislative, judicial and executive.

This pamphlet contains the minimum that every Canadian ought to know about his government.



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The Canadian Constitution

By BRIGADIER W. J. LAWSON, Q.C., Judge
Advocate General of the Canadian Forces

The Canadian Constitution is a somewhat hybrid growth. It is an attempt—the first one ever made—to combine the principles of responsible government with a federal organization. Responsible government is derived from the mother country, Great Britain. Federal government on a large scale was first tried in the great republic south of us, the United States. Canada's constitution draws to some extent on both sources but is based largely on the British model.

A federal government is a government in which the sovereign powers are divided between a central government and local governments. It is of the essence of federal government that the local governments are completely sovereign within their field and cannot be interfered with in that field by the federal government. This distinguishes local governments from, for example, municipal governments which, although they may have fairly substantial law-making powers, exercise those powers as delegates of some sovereign legislative body—in Canada the provincial legislatures. The provincial governments in Canada are just as sovereign and just as powerful when acting within their jurisdiction under the British North America Act as is the Federal Government itself.

The Canadian constitution although partly written in the British North America Act, an act of the United Kingdom Parliament passed in 1867, is very largely based on conventions and usages inherited from Great Britain, the enforcement of which is dependent upon the rule of law. A reading of the British North America Act itself would convey to a foreigner not familiar with British constitutional principles and practices a completely wrong idea as to how Canada is governed. For example, the British North America Act provides that the whole executive authority in Canada is vested in the Queen who is represented by a Governor General appointed by her. The Governor General is assisted

by a council which he chooses, summons and removes and which advises him in his work. As the representative of the Queen, he is Commander-in-Chief of all the naval, army and air forces of Canada. He appoints the judges, the Speaker of the Senate and the Lieutenant-Governors of the provinces. He appoints all the members of one House of the legislature, i.e. the Senate, and these members hold office for life. The other House, that is, the House of Commons, is called together by the Governor General and can be dissolved by him at any time. All Bills relating to the expenditure of money must be recommended by the Governor General before they can be passed by Parliament. No Act of Parliament can become law unless the Governor General assents thereto and he may disallow any provincial act. Similar general powers are exercisable in the provinces by the Lieutenant-Governors. A foreigner reading this Act would inevitably come to the conclusion that Canada suffers under an iron dictatorship, the autocratic rule of one central figure who governs Canada with little reference to, or control by, the people.

It is the unwritten portion of the constitution which gives the real clue as to how Canada is governed. Under it the Governor General does not act according to his own judgment but on the advice of his Council. That Council is not the Council mentioned in the British North America Act but only a part of the Council acting in the name of the whole. This active part of the Council is the Cabinet, a body not mentioned anywhere in the Act. The Cabinet is chosen by the Prime Minister who himself is not mentioned in the Act. The Prime Minister and his Cabinet must always have the support of the House of Commons and if they lose that support must resign; all members of the Cabinet must have seats in that House or in the Senate and most of the Cabinet are executive heads of Departments of the Government. It is this fact of responsible government that gives you the real key as to how Canada is governed. Everything is done in the name of the Queen, but only by permission of the elected representatives of the people.

The Constitution

The Source of Authority in the Democratic State

Broadly speaking there are two types of government, arbitrary government or dictatorship, and constitutional government. The essence of constitutional government is the fact that the political authority in the state is exercised according to established rules and procedures. These rules and procedures are the constitution, or the fundamental law. Constitutions can be of vastly different nature and composition. They can be set forth in a formal written document as in the constitution of the United States, which is the legal source of all authority in that country, or they may be nothing more than a flexible collection of legal rules and conventions as is the unwritten constitution of Great Britain.

The Constitution of the United States

The written form of constitution is the more easily understood for it exists in documentary form. In the United States the document is called "The Constitution of the United States of America". With the successful revolt of the American colonies against British rule it was necessary to unite the 13 separate colonies into a single political unit, and to this end delegates from each colony met and agreed to certain fundamental principles according to which they considered their new nation should be governed. The participating states delegated power to the new central government. The United States chose to have their constitution guarantee a large measure of authority to the individual states and to place certain checks on the new Federal Government as a precaution against its gaining too much power. The constitution states in detail what may be done by the Federal and state governments and makes the Supreme Court of the United States the final arbiter on the legality of the actions of both. This type of constitution is inflexible and may be changed only with the consent of the individual states which make up the federation.

The Constitution of Great Britain

The constitution of Great Britain on the other hand is not contained in any one single document called the British Constitution. It is the system of government which actually exists. The form and constitutional procedures of the British government are based on a mixture of legal rules and customary practices which have gradually evolved during the growth of the British state. The particular feature of the original British situation which made possible this loose and changing type of constitutional practice was the fact that it was a unitary state with one central governmental authority. Hence, there was no problem of uniting individual states under a central authority and considering any division of powers. The British Parliament is the supreme authority in the state. It can change the British constitution by ordinary Act of Parliament.

The Nature of the Canadian Constitution

In examining the nature of the Canadian constitution two important considerations must be kept in mind. The first is that the Canadian constitution is a mixture of the United States and British types of constitution. We have a document, the British North America Act, which looks something like the American constitution but was drafted with the intention of setting up a form of government similar to that of Great Britain. The British North America Act was primarily concerned with the union of three British North American colonies and is essentially a legal statement of the terms and conditions of the union. It contains almost nothing on the important question of how the Federal and provincial governments are to function except to indicate that constitutional practices similar in principle to those of the United Kingdom are to be adopted. The reason for this vagueness is that the system of responsible government was fairly well established and understood in the colonies by 1867 and because much of the system is founded on convention and practice which it was considered impossible to define in the statute. Furthermore, any such attempted definition would have destroyed the flexibility inherent in British constitutional practices. The British North America Act was designed to be chiefly a definition of relations

between the Federal and Provincial governments and the British constitutional principles were intended to be read into the Act as required.

The second consideration to be taken into account is the comparatively recent development of Canadian autonomy or national status. In 1867, the over-riding authority of the British Parliament was expected to continue, and it was understood that the exercise of royal power in Canada in such fields as foreign relations would continue to be on the advice of British ministers, not Canadian. But this has changed completely. No British legislation is now made for Canada except when specifically requested by Canada and no British officials have any control over Canadian internal or external affairs. Many of the provisions of the British North America Act which were appropriate for the colonial era are now outmoded yet few formal changes have been made in the Act by amendment. Most of the advance in status towards Canadian nationhood has been by the alteration of usage and conventions which is the British means of constitutional development.

The Written Constitution

It seems to have been the intention of those who drafted the British North America Act, 1867, that Canada should have a strong federal government and that the governments of the provinces would control only local and minor affairs. There were good reasons for this. The American Civil War had indicated the danger inherent in a federal system which gave wide powers to the individual states. The economic difficulties resulting from British free trade policies and the termination of reciprocity with the United States demanded a strong central government. So did the defence of the colonies. Both Charlottetown and Quebec Conferences were clear on this feature.

The British North America Act originally contained 147 sections divided topically into 11 main parts not including the preamble. The matters covered by these parts are briefly as follows:—

Parts 1 and 2—These identify the Act and set forth the names of the four original provinces in the Union—Ontario, Quebec, New Brunswick and Nova Scotia. The decennial census was provided for.

Part 3: Executive Power—The Governor General is to exercise the executive power in the manner of the British Crown in the United Kingdom. He is to be assisted or advised by a Privy Council of his own choosing. The British Sovereign is to be the Commander-in-Chief of the Canadian Armed Forces.

Part 4: Legislative Power—The Canadian parliament is to consist of a Senate and House of Commons. The constitution and procedure of the legislative bodies and the qualifications and privileges of their members are prescribed. Readjustment of representation is to be made each 10 years. The Commons can not pass money bills unless they are recommended by the Governor General. The British government can disallow any Canadian legislation within two years of its receipt.

Part 5: Provincial Constitutions—Provincial legislatures in Nova Scotia and New Brunswick were already in being but provision had to be made for the establishment of legislatures in the new provinces of Ontario and Quebec. The existing laws are to continue in force. Lieutenant-Governors in the provinces are to be appointed by and with powers parallel in general to those of the Governor General.

Part 6: Distribution of Legislative Powers—This is the most important part of the Act as it deals with the allocation of authority between the Federal and provincial governments. This division of powers is the essence of federation and the area of constant friction between the legislative authorities.

Part 7: Judicature—The selection appointment and tenure of judges in all courts are prescribed and provision is made for a general court of appeal, the Supreme Court of Canada and other federal courts to be established.

Part 8: Revenue, Debts, Assets, Taxation—A Consolidated Revenue Fund is established and the Dominion is to take over provincial debts with certain reservations. Rates of federal grants to the provinces are detailed and it is provided that the existing customs and excise laws should continue in force. Public lands and mines are assigned to the provinces.

Part 9: Miscellaneous Provisions—These provided for the continuance of existing law courts and officers. The use of the English and French languages in Parliament is guaranteed and treaty-making power of colonial nature only is extended.

Part 10: Intercolonial Railway—This part was repealed in 1893.

Part 11: Admission of Other Colonies—Provision is made for admission into the federation of Prince Edward Island, Newfoundland, British Columbia, Prince Rupert's Land and the Northwest Territory, at the request of both the Colonies and the Dominion. The representation to be given these areas in event of entry is laid down.

The provisions of Part 11 were soon exercised and the number of provinces has increased from the original four to the present ten, Prince Rupert's Land and the Northwest Territories were admitted in 1870, British Columbia in 1871, Prince Edward Island in 1873 and Newfoundland in 1949. The three Prairie Provinces were carved out of the Northwest Territories by Dominion statutes: Manitoba in 1870, Saskatchewan and Alberta in 1905.

The Unwritten Constitution

The British North America Act set up the new federal state and defined the division of authority between the central and provincial governments, but it gave little direction as to how the parliamentary systems in either the federal or provincial areas were to operate. The Act did declare that the British constitutional practices and existing laws were to continue in force in the colony. This sweeping provision encompassed the enormous collection of British constitutional and parliamentary practices, conventions and usage which were destined to form an essential part of the Canadian constitution. While a full description of these cannot be attempted, some of the important elements of the unwritten constitution are: (1) responsible government, i.e., the control of the executive by the House of Commons; (2) political parties which, though not even mentioned in the written constitution, are the most active elements in our political life—it is unlikely that our system of government could operate without them; (3) the rule of law which receives no mention in the Act but is no less an important feature of the Canadian constitutional practice that it is in the United Kingdom; (4) the royal prerogative or the power to do such things as declare war, make treaties and appoint ambassadors—functions now exercised by the Canadian Government.

Division of Powers

The government of Canada is based on a federal system. A federal system implies a grouping of local governing units (provinces) having a certain amount of self-government with a general government of the whole nation controlling matters of vital interest to all. It is a system of division of power and requires for its successful operation discussion, co-operation and a certain amount of give and take. We are fortunate to have inherited this type of government which is acceptable to our natures rather than a unitary type. The federal principal is not merely suitable for Canada, it is a necessity. The cleavage of race, language and religion, together with the divergence of sectional economies and social life make some form of divided government even more imperative today than in 1867. Federalism has the advantage of providing constitutional machinery for preserving the necessary provincialism while also permitting common action in essential matters. Unity is retained. The distribution of power is, however, a continuing problem.

The original BNA Act united Quebec, Ontario, Nova Scotia and New Brunswick and the other provinces came in separately. This meant joining the Dominion under what might be called different contracts and it created different problems regarding distribution of power. One of the very reasons that federalism is needed in this country, namely differences in population, wealth, resources and religion, is also a reason why distribution of power is difficult.

To go into some of the details of division of power let us look at Section 91 of the BNA Act which lists Dominion powers. Section 91 first gives Parliament a general power to "make laws for the peace, order and good government of Canada, in relation to all matters not coming within the classes of subjects by this Act assigned exclusively to the legislatures of the provinces". From this immediately comes the question as to whether a certain subject which at first sight would appear to be within provincial jurisdiction does not transcend the same and fall under Parliament's authority. It then gives a list of classes of subjects over which Parliament has exclusive authority. This list is given only

for greater certainty and not to restrict the scope of the general power previously mentioned. The list contains 29 classes of Dominion powers such as regulation of trade and commerce, defence, currency, raising money by any mode or system of taxes, postal services, navigation and shipping and weights and measures. Think of the confusion that would have resulted if each province had its own money, its own weights and measures and its own armed forces.

Section 92 assigns 16 powers to the provinces, including power to amend the provincial constitution (except the office of the Lieutenant-Governor), direct taxation in the province for provincial purposes, the management and sale of public lands and timber belonging to the province, municipal institutions and laws relating to property and civil rights within the province.

In agriculture and immigration Canada and the provinces have concurrent powers but the law of the former prevails in case of conflict.

Education was considered so important, that the whole of Section 93 is devoted to it. This section confers upon Parliament limited legislative authority over education, for the protection of minority rights with respect to denominational, separate or dissentient schools. The provinces have exclusive power to legislate in the matter subject to these reservations.

Most of the difficulties that have arisen between the Federal and provincial governments have been the result of new conditions naturally unforeseen at Confederation, judicial interpretations of Section 91 which, from 1867 to 1945, tended to extend provincial powers and restrict those of the Dominion and the provinces. These increases have been required because the people have demanded expensive services such as pensions, unemployment insurance, and health insurance. The provinces being limited to direct taxes have continually to meet competition from the Federal Government which has invaded these fields as it is entitled to do. Many of these difficulties, such as those concerning family allowances and unemployment insurance, have been solved by agreement.

The constitution makers of 1867 probably thought the provisions of the Act were so definite and precise that it would furnish

complete guidance for the future. Yet the construction to be placed on the written words has given rise to innumerable legal disputes, parliamentary discussions, royal commission inquiries and Dominion-Provincial Conferences often without clarifying the position or resolving the difficulties. The misuse of many political terms and the prevalence of historical misconceptions have kept alive the controversy, while political pressures and legal interpretations have added to the general confusion.

Legislative, Judicial and Executive Powers

It has been established that the nature of the Canadian constitution was directly affected by both the parent British Government and that of the neighbouring United States of America. A more remote but nevertheless real and basic influence was that of 18th century lawyers and philosophers, who are commonly credited with having greatly influenced the framers of the American constitution. The French philosopher Montesquieu, the English philosopher Locke and the English jurist Blackstone may be particularly mentioned in this regard.

These men, in their theoretical writing on the democratic form of government, divided the functions of government into three separate and distinct branches: (1) the legislative branch which makes the laws; (2) the executive which carries out the laws and (3) the judiciary which interprets the laws in case of doubt or dispute.

The U.S. System of Government

In 1787 when the United States constitution was framed, the ideas expounded by the philosophers were very highly regarded. As a result, the government of the United States is composed of three distinct and separate bodies with, theoretically, entirely different functions. It is instructive to examine this arrangement with a view to comparison with our own, the general form of which was evolved some 80 years later. In broad outline it is as follows:—

The President—The President is the chief executive. He is assisted in his duties by a Cabinet of his own choosing. He is responsible only to the people who elected him and the members of his Cabinet are responsible only to him. The President and his Cabinet are independent of Congress.

The Congress—The Congress, comprising the Senate and the House of Representatives, is the legislative body. Its members are elected by the people for a specific term of office. The Congress

is all powerful within the scope defined by the Constitution. The President has the power to veto legislation and his veto can be over-ridden by a two-thirds majority.

The Supreme Court—The Supreme Court is the Chief judicial body. It is composed of a group of distinguished judges who are appointed for life by the President with the concurrence of the Senate. The Court has the power to decide, when called upon to do so, whether legislation passed by Congress or by a state legislature is within the powers (*intra vires*) or outside the powers (*ultra vires*) conferred by the constitution. It also interprets the wording of the constitution. It is a very powerful body. The wishes of the President and of Congress can be nullified if a majority of the Court finds a proposed law *ultra vires*.

This rigid separation of powers in the United States plan constituted a great modern experiment in democratic government. Several features, however, did not appeal to the Fathers of Confederation, who decided on a rather different form of organization for Canada. The main faults found with the United States plan may be stated briefly as follows:—

(a) The President has power only to recommend legislation, or to veto legislation which he does not favour. This often means deadlock when President and Congress do not agree.

(b) Congressional elections every two years, with little done during the last few months of the term, made for ineffectual government.

(c) Members of the Cabinet can not sit in Congress, although they can be summoned before its committees to answer questions. They are not leaders of the House, and frequently are of a political party entirely opposed to the majority of the legislators.

(d) The President is a very powerful figure. He is Commander-in-Chief of the armed forces in time of war, and is permitted by the constitution to carry out policies as he sees fit. When a well-meaning but weak President, elected by the people on a domestic issue finds himself in the centre of a national emergency, nothing can be done to replace him until his term of office expires.

(e) On the death of a President, his successor is the Vice President, usually a "safe" party man nominated because of his ability to "carry" a state or group of states and not usually for his outstanding statesmanship.

In brief, the Canadian view was that the American system was too theoretical, too inflexible and, under certain circumstances, too dangerous to be copied.

British System of Government

At the time of Confederation, the British system of government, while still developing, had become just about as democratic as the American, almost as representative, and much more suited to changing conditions and sudden emergencies. Its chief features were:—

(a) Responsibility of the Cabinet to the House of Commons. The Queen's ministers combined the legislative and executive functions; they sat in Parliament and remained in power only so long as the elected House had confidence in them; the House could throw them out of power at a moment's notice when it lost confidence in any of them. As a result, cabinet ministers fought legislation through the House of Commons or resigned in favour of a ministry that could. They were present in the House daily to explain their actions and those of the civil service and the armed forces. They were leaders of the legislature, in fact, its executive committee. Moreover, when the House refused to support them, the Prime Minister could recommend that the Queen dissolve Parliament, and hold a new election.

(b) The Chief of State was an hereditary Sovereign, above politics, with no need to curry favour in order to win elections, and consequently more inclined to take the long view. She had very little actual power, but served as a social head of the State, the Prime Minister being the actual chief executive. Her power was exerted by personal influence, her actual power having shrunk to the three royal rights; the right to advise, the right to warn and the right to be informed.

The Canadian System

The Fathers of Confederation decided to follow British practice in the organization of the new government. The chief departure from the British model was the federal organization with its five governments, each functioning pretty much as did the Mother of Parliaments, except that it was restricted in authority by the distribution of powers between the Federal and provincial governments.

There should be little need to explain the present organization of the Canadian Government; but perhaps it would be well at least to identify the various bodies with which the powers under discussion rest.

We have in Canada: (1) the Crown, the nominal head of the state, in whose name all authority still rest and is exercised and the resident representatives of which are the Governor General and the Lieutenant-Governors; (2) the Senate and the House of Commons—the two legislative bodies—members of the former being appointed for life by the Governor General on the advice of the Cabinet and those of the House of Commons being elected; (3) the Prime Minister and his Cabinet as executive, all of whom are elected as Members of Parliament—leaders of the party in power; they are also the leaders of Parliament; they combine the legislative and executive functions and control the administration of government and (4) the judiciary which is the authority that interprets the law.

Executive Powers

Notwithstanding the letter of the law as expressed in the British North America Act, executive powers now lie not with the Crown, but entirely with the Canadian Governments. This is not to say, however, that the influence of the Crown either directly or through the Governor General and Lieutenant-Governors is not still appreciable. Authority has, however, gradually been succeeded by influence, and obvious and aggressive leadership has given way to suggestion and persuasion.

Legislative Powers

Over the years there has been an appreciable shift of legislative powers from the Federal Government to the provincial governments. A series of rulings by the Privy Council has had the effect of creating a much more even balance of power between the central government and the provinces than had been intended by the Fathers of Confederation. Recent signs suggest a possible reversal of this trend.

The Judiciary

There is a significant difference in the character of the judicial system from that of the other elements of government. In the judicial field the federal principle is almost completely lacking. It is true that there are both Federal and provincial courts; but their functional chart is a vertical one, forming virtually a single unit. This makes for a simple and effective system, little troubled by conflicts.

By the terms of the British North America Act the Dominion is empowered to create a general court of appeal and to establish "any additional courts for the better administration of the laws of Canada". The province has jurisdiction over "the administration of justice in the province, including the constitution, maintenance, and organization of provincial courts, both of civil and criminal jurisdiction, and including procedure in civil matters in these courts". Procedure in criminal matters is under Federal control, as is also control of appointments, remuneration and, if necessary, the removal of the judges of both Federal and provincial courts (with a few minor exceptions). Thus a single system of courts enforces both federal and provincial law in each province.

Until recently the highest court was the Judicial Committee of the Privy Council, an Empire Court. It is now replaced by the Supreme Court of Canada, a federal court. Using Ontario courts as typical of the provincial courts we have (a) Supreme Court of Ontario—a provincial court with federal appointment and payment of judges—which is divided into two sections, the Court of Appeal for Ontario and the High Court of Justice for Ontario; (b) the County Courts, which are provincial courts the judges of

which are appointed and paid by the Federal Government; (c) the Surrogate Courts which exist in every county for dealing with the estates of deceased persons; (d) the Division Courts—as many as 12 to a county—which hear minor personal actions; (e) the Magistrates' Courts, of which there are many, for the trial of designated minor criminal offences and a few civil cases such as those under the Landlord and Tenant Act; (f) other courts such as Coroners' Courts and Juvenile Courts.

The Supreme Court of Canada hears appeals only, although it may, at the request of the government, rule on the legality of an Act. The judges are appointed by the Governor-in-Council and hold office during good behaviour.

There is another Federal court, the Exchequer Court of Canada, which is not a fully integrated part of the system. Its members are appointed by the Governor-in-Council and hold office during good behaviour. This court deals with such cases as claims against the Crown and patents. It has original jurisdiction.

Administrative Powers

The administrative powers have assumed an increasing importance in recent years. This is because government has become far more active in the economic and social fields, such as public health, housing and employment. This trend seems likely to continue and to grow even more rapidly in the future.

Powers delegated by statute to the administration often include power to enact subordinate legislation by order-in-council or departmental regulation and to render judicial decisions in disputes arising in regard to administrative questions, with little or no opportunity for appeal to the courts.

Power to enact subsidiary legislation within the statutes can be delegated by Parliament to individuals or to a board or commission. Delegation of both kinds is very common and it has tended to increase in recent years. Some of these delegated powers go so far as to give the power to vary the provisions or to extend the scope of the Act in important respects. The most extreme example of such a delegation of power is the War Measures Act, which in time of war gives authority to the Governor-in-Council to make such orders and regulations as he "may deem necessary

or advisable for the security, defence, peace, order and welfare of Canada". This power continues for as long as the war emergency lasts. With this goes the authority to re-delegate powers, including the power of delegation itself.

This feature of delegated powers would seem both necessary and acceptable in an emergency. It becomes somewhat controversial when applied outside of an emergency, or when it comes to deciding when an emergency is in existence or has passed.

Judicial powers may also be delegated in some instances, such as in the case of the Canadian Pension Commission. The more common delegation is that of quasi-judicial functions involving the exercise of official discretion. This permits the administration of a statute to be effectively tied-in with its interpretation, and gives it flexibility and quick adaptability.

In the majority of cases of delegation of discretionary powers, the decision of the administrative official (on behalf of the Minister) is final. Should, however, the question be judicial in nature, appeal to the courts may be permitted. Where a decision hinges on a matter of public policy, an administration appeal court may be used.

There is obviously an appreciable element of danger in the erection of barriers between the citizen and the courts of justice. The willingness of the Cabinet Minister to accept responsibility may not always prove a satisfactory substitute for the normal safeguard provided by the courts, and it is possible that more consideration may have to be given to this question in the future.

The Queen, through her representative, the Governor General, the Senate and the House of Commons constitute the Parliament of Canada. The consent of all three is necessary to enact legislation.

The Senate

While The Senate possesses legal power almost equal to that of the House of Commons, and is in theory an independent legislative body, it is in actual practice a minor partner in the legislature. Three constitutional arrangements emphasize this fact, the first two explicit, and the third unwritten. These three arrangements are: (1) that only the House of Commons is based on

popular election; (2) that the House of Commons has the sole power to originate money bills and (3) that the Cabinet is responsible to the House of Commons and not to the Senate.

The main function and duties of the Senate are: (1) to act as a revising and restraining body and (2) to protect the interest of the provinces and minority racial, religious and language groups. The Senate usually participates in legislative work by consideration of measures after they have passed the Commons and it can propose amendments to, or even reject, a bill. Adequate consideration of bills is made difficult by their late arrival from the Commons, often in the closing days of the Session. The Senate has never taken the position that its power to reject or amend a bill is absolute and independent of public opinion. In 1926, the Senate rejected the Old Age Pension Bill, and yet a short time later passed the Bill, after the Government having this proposal in its platform was re-elected. Thus, when a clear mandate of the people is expressed the Senate will not oppose it.

The Senate does some of its most useful work in consideration of private bills. The object of a private bill is to alter the law relating to some particular locality, or to confer rights on, or relieve from liability, some particular person or body of persons. In practice, nearly all private bills now originate in the Senate. The Senate, aside from its revising power, and its useful participation in the passage of private bills, has been successful in conducting investigations into current political or social problems, a most fruitful field for its endeavours.

The House of Commons

The House of Commons is the real centre of parliamentary authority and exercises a preponderant influence in the government. It is the organized medium through which the public will find expression and exercises its ultimate political power. It forms the indispensable part of the legislature and it is the body to which the executive must turn for justification and approval. It is based on popular election and, basically, representation by population determines the number of seats allotted to each province, with provision for adjustment after each decennial census.

The House of Commons is not properly constituted until it has elected a Speaker. The Speaker presides over all meetings of the House and must decide all points of order that arise. The Clerk of the House keeps a scroll of the actual business transacted on each day. From that, the journals of the House are made up, and these are the official records of the House (not Hansard). The Sergeant-at-Arms is responsible for maintenance of order by all who attend parliamentary Sessions and for all movable property within the House.

The procedures of the House are governed by what is known as "Standing Orders of the House". They might be described as statutes of parliamentary procedure, and govern the members' conduct in the House.

Committees perform an important work in the business of the House. They are, standing committees, special or sessional committees, and the most important of all, the committee of the whole House. The special function of this committee is the discussion of details. It functions in three capacities: (1) as a Committee of Supply, dealing with votes and grants for expenditures; (2) a Committee of Ways and Means, dealing with raising of money and (3) as a Committee of the Whole House in consideration of money and public bills, discussing them clause by clause.

The basic procedure in the passage of bills is that they receive three readings in the House of Commons, and three in the Senate and then go to the Governor General for his signature. Bills are classified as public and private and different procedures are followed in the passage of these different kinds of bills through Parliament.

Public Bills—A public bill is introduced as a measure of public policy in which the whole country is interested. Its sponsor in Parliament, usually a Cabinet member, must give 48 hours notice that he intends to introduce the bill. On moving for leave to introduce it he may give a few words of explanation but no discussion is allowed at that time. If no one objects, the Speaker declares the motion carried and a motion for first reading follows immediately, but no debate takes place. If no objections are made, the second reading of the bill is usually ordered for the next sitting of the House though the bill may be killed by a

motion that it be withdrawn or that the second reading be postponed for a term beyond the probable duration of the Session. This latter procedure is known as "the six months' hoist". At the second reading it is proper to discuss and propose a motion relative to the principle of the measure. Clauses of the bill may be referred to but may not be amended. When the bill has been read a second time it is referred to a committee which reports amendments to the House. The bill is now open for debate and amendment. Should there be no amendments the third reading may take place immediately and a motion be introduced to pass the bill. The third reading is open to debate. The bill may be amended by being referred back to the Committee of the Whole and sometimes it is amended to such an extent that even its title has to be changed in Committee. The third reading, like the second, may be postponed with the object of killing the bill.

Private Bills—The object of a private bill is to alter the law relating to some particular locality or to confer rights on, or relieve from liability, some particular person or body of persons. In practice, most private bills originate in the Senate though they may originate in the House of Commons too. The procedure followed is partly legislative and partly judicial but, as with public bills, there are three readings. A private bill originates in a petition presented by its promoter and a fee—\$200 if the bill originates in the Senate, \$500 if in the House of Commons—must be paid. Plans and maps, where necessary, must accompany the bill and notices of intention must be advertised. If the Committee on Standing Orders finds that all the formalities have been complied with the bill is read the first and second time in the same way as a public bill. It is then referred to a Standing Committee of the Senate which holds hearings at which counter-petitions may be presented and at which counsel for both sides are heard. In this respect, something approaching a judicial inquiry takes place. When the Standing Committee reports to the Senate its recommendations are usually accepted and the bill is read a third time and sent to the House of Commons.

The advantage in giving the Senate a preference in dealing with these bills is that private bills (which under standing orders must always be presented early in the Session) can be conveniently considered by the Senate in the interval when it is awaiting the public bills which are to be sent up by the Commons.

Some functions of the House of Commons—The House of Commons is a legislative body, therefore, its function is to pass legislation. True, but what else does it accomplish and how?

The House gives guidance, encouragement, advice and support to a Government, as well as disparagement and criticism. A companion function to this is that of educating and leading public opinion on many questions. It will discuss, argue, investigate, oppose, decide and postpone action on many questions on which the voters have no certain convictions and on which they need further information or guidance.

One of its major functions is to criticize. Here the nature of participation by the individual depends on party affiliations. If he is a majority member, he can make himself heard in the Government caucus; if he belongs to the Opposition, he can voice his criticisms of measures when they are before the House. To forestall opposition criticism the Cabinet will draft its proposals in the most acceptable terms possible.

Another vital function of the House is the power of general supervision. The House asks Ministers many questions relating to their departments. It draws the activities of the Government into the light of publicity.

Finally, the House of Commons is a selective body. It provides the rigorous environment in which ministerial talent must prove its worth and establish its right to office, as the prospective Minister usually serves an apprenticeship in the House.

In concluding, we can say the House of Commons is the supreme political agency of the Canadian people. It controls, in the last resort, all branches of the government, legislative, executive and judicial. No government can continue in existence without the support of a majority in the House. The powers which it exercises under the BNA Act, as well as those it has assumed on other authority are derived from its unquestioned pre-eminence as the agent of the Canadian people. It is primarily a representative body and its problems have been directly or indirectly concerned with the effort to secure an adequate expression of public opinion.

Conclusion

The British constitution is flexible and has grown into its present form over the centuries. As the poet Tennyson said, Britain is the land "where freedom slowly broadens down from precedent to precedent". The Canadian constitution is also capable of growth and has, since Confederation, changed year by year to fit new conditions and Canada's new status as a nation. That part of the Canadian constitution, that is written in the British North America Act cannot grow or change, but must be amended by formal act of a legislative body. The Act was written in 1867 when conditions both in Canada and the world were vastly different from what they are today. The Act urgently requires amendment. One of the major problems facing the governments of Canada and of the provinces is to evolve a method by which the Act can be made flexible and capable of being changed with the changing times.

Governors General of Canada since Confederation

<i>Name</i>	<i>Date of Appointment</i>
Viscount Monck, G.C.M.G.	1867
Lord Lisgar, G.C.M.G.	1868
The Earl of Dufferin, K.P., K.C.B., G.C.M.G.	1872
The Marquis of Lorne, K.T., G.C.M.G.	1878
The Marquis of Lansdowne, G.C.M.G.	1883
Lord Stanley of Preston, G.C.B.	1888
The Earl of Aberdeen, K.T., G.C.M.G.	1893
The Earl of Minto, G.C.M.G.	1898
Earl Grey, G.C.M.G.	1904
Field Marshal H.R.H. the Duke of Connaught, K.G.	1911
The Duke of Devonshire, K.G., G.C.M.G., G.C.V.O.	1916
General The Lord Byng of Vimy, G.C.B., G.C.M.G., M.V.O.	1921
Viscount Willingdon of Ratton, G.C.S.I., G.C.I.E., G.B.E.	1926
The Earl of Bessborough, G.C.M.G.	1931
Lord Tweedsmuir of Elsfield, G.C.M.G., G.C.V.O., C.H.	1935
Major-General The Earl of Athlone, KG., P.C., G.C.B., G.C.M.G., G.C.V.O., D.S.O.	1940
Field Marshal Viscount Alexander of Tunis, K.G., G.C.B., G.C.M.G., C.S.I., D.S.O., M.C., LL.D., A.D.C.	1945
The Right Honourable Vincent Massey, C.H., P.C.	1952
Major-General Georges-P. Vanier, D.S.O., M.C., LL.D., C.D.	1959

Prime Ministers since Confederation

<i>Name</i>	<i>Length of Administration</i>
Rt. Hon. Sir John Alexander Macdonald	1867 - 1873
Hon. Alexander Mackenzie	1873 - 1878
Rt. Hon. Sir John Alexander Macdonald	1878 - 1891
Hon. Sir. John Joseph Caldwell Abbott	1891 - 1892
Rt. Hon. Sir John Sparrow David Thompson	1892 - 1894
Hon. Sir. Mackenzie Bowell	1894 - 1896
Hon. Charles Tupper	1896 - 1896
Rt. Hon. Sir Wilfrid Laurier	1896 - 1911
Rt. Hon. Sir Robert Laird Borden	1911 - 1920
Rt. Hon. Arthur Meighen	1920 - 1921
Rt. Hon. William Lyon Mackenzie King	1921 - 1926
Rt. Hon. Arthur Meighen	1926 - 1926
Rt. Hon. William Lyon Mackenzie King	1926 - 1930
Rt. Hon. Richard Bedford Bennett	1930 - 1935
Rt. Hon. William Lyon Mackenzie King	1935 - 1948
Rt. Hon. Louis Stephen St. Laurent	1948 - 1957
Rt. Hon. John G. Diefenbaker	1957 -

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